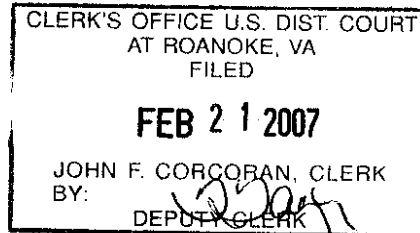


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION



SETH JAYE CLARK,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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Civil Action No. 7:06CV00210

**FINAL ORDER**

By: Hon. Glen E. Conrad  
United States District Judge

For the reasons stated in the accompanying memorandum opinion, it is hereby

**ORDERED**

as follows:

1. Petitioner's motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 is **GRANTED** as to petitioner's claim that his attorney was constitutionally ineffective for failing to file a notice of appeal;
2. All other claims are **DISMISSED** as moot;
3. Petitioner's motion for an evidentiary hearing is **DISMISSED** as moot;
4. The Clerk shall prepare a new judgment in Criminal Action No. 5:04CR30018, the same in every respect as the original judgment except as to date of entry;
5. Upon entry of the new judgment, the original judgment shall be **VACATED**;
6. Petitioner shall have ten days from the entry of the new judgment to file a notice of appeal or request the Clerk to file a notice of appeal on his behalf; and
7. This action shall be **STRICKEN** from the active docket of the court.

The Clerk is directed to file a copy of this order and the accompanying memorandum opinion in Criminal Action No. 5:04CR30018. The Clerk is further directed to send certified copies of this order and the accompanying memorandum opinion to the petitioner, counsel of record for the respondent, and petitioner's defense counsel in the criminal action.

ENTER: This 26<sup>th</sup> day of February, 2007.

A handwritten signature in black ink, appearing to read "J. L. Conrad", is written above a horizontal line.

United States District Judge